IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3936 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUNICIPAL NOKARIAT MANDAL
Versus
SAVARKUNDLA NAGARPALIKA

Appearance:

MR KS JHAVERI for Petitioner No. 1
MR JD AJMERA for Respondent No. 1
MR AK CLERK for Respondent No. 2
NOTICE SERVED for Respondent No. 3
MR AJ DESAI for Respondent No. 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE D.A.MEHTA

Date of decision : 22/02/2002

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. By this Petition under Article 227 of the Constitution of India, the petitioner-Union (Municipal Nokariat Mandal) through its General Secretary seeks quashing of the award dated 25-04-1985 passed by the Industrial Tribunal, Rajkot on a Reference under Section 10 of the Industrial Disputes Act, 1947 (for short `the Act').

#. Admittedly, industrial dispute regarding service conditions and regularisation of services of daily wage Safai Kamdars (employees working in Sanitation Department) of the employer - Savarkundla Nagar Palika was raised by the respondent-Union, viz., Saurashtra Safai Kamdar Sangh. Conciliation proceedings were taken up under the provisions of the Act, and on their failure a Reference was made under Section 10 of the Act to the Industrial Tribunal. In the Schedule to the order of Reference dated 09-09-1983 (Annexure P-1) amongst other terms of reference on service conditions, one of the terms of reference was Term No. 5, which is as under:

> "In accordance with the directives of the Court 30 employees have been made permanent but they are utilised in the different areas which means that the Nagarpalika needs more workers, hence 20 fresh workers be employed."

#. In the course of adjudication of the industrial disputes referred, including on Term No. 5 quoted above, a settlement was reached between the Nagar Palika and the respondent-workers union. Consequent thereupon, the impugned award dated 25-04-1985 came to be passed with directions for making 19 workers named in the award as permanent, who were engaged on daily wage basis.

#. After the award was published, this Petition under Article 227 has been filed by the present petitioner-Union stating that the respondent-Union on the basis of settlement reached between the employer and the respondent-union has obtained an award for regularisation of the services of 19 members of their Union and 20 other senior daily wage Safai Kamdars who are named in the Petition at Annexure P-5, have been ignored.

#. Learned counsel Shri S.K. Zaveri appearing for the petitioner-Union in assailing the award contends that the

terms of reference did not authorise the Tribunal to create new posts. It is also contended that on the basis of the settlement reached between the employer and the respondent-union, without notice to other Unions and the workers, relief of regularisation of making permanent 19 workers named in the award could not have been granted thus superseding the claims of other Safai Kamdars, who had put in longer period of service. Learned counsel for the petitioner-Union also contended that the Industrial Disputes (Gujarat) Rules, 1966 by Rule 16 requires the Tribunal to issue a general notice in Form V to all interested in the adjudication of the dispute. It is submitted that no such notice was given, thereby the petitioner-Union was deprived of participating in the adjudication proceedings.

#. Reliance is placed on a decision of Supreme Court in the case of Mahatma Phule Agricultural University and others v. Nasik Zilla Sheth Kamgar Union and others reported in (2001) 7 SUPREME COURT CASES 346 at page 356, particularly the directions contained in Paragraph 4 of the said judgment, to show that such a relief was granted in favour of senior employees on their superior claim for regularisation.

#. On behalf of the Municipality, Savarkundla, Shri J.D. Ajmera appears and submits that from the old records available, the Municipality had been able to find out the total period of service of each of the employees listed in Annexure P-5 filed by the petitioner who claim seniority is above the employees who have been made permanent in the award of the Tribunal. Along with its short affidavit-in-reply, the Municipality has filed a chart containing names of all those workers mentioned in petitioners list (Annexure P-5) and from the list, it is pointed out that many of the workers did not at all serve in the years 1982-83 to 1983-84 and others who served in 1984-85 have to their credit service of certain number of days mentioned in the chart filed by the Municipality. It is submitted by the counsel appearing for the Municipality that from the available record of the workers mentioned by the petitioner in List (Annexure P-5), it is not demonstrated that they were seniors and had a longer period of service than those named in the award have been directed to be made permanent. Learned counsel appearing for the Municipality submits that the burden to make out a prima facie case that the workers listed in List (Annexure P-5) were seniors to those who have been made permanent by the award is on the petitioner and the petitioner having failed to even prima facie prove the same, there is no question of granting

any relief.

#. For the respondent-Union, at whose instance the industrial dispute was raised and settled by passing of an award, Shri A.K. Clerk appears. The Petition is opposed by the respondent-Union mainly on the ground that at no stage either at the time of conciliation or in the course of adjudication proceedings, the respondent-Union participated. Even after the publication of the award based on settlement, the petitioner-Union for long two years did not take any steps to raise any dispute regarding seniority and claim of regularisation of the workers, whom the petitioner represents. It is therefore submitted that this Court should not interfere in exercise of its powers under Article 227 when there is no error in the award of the Industrial Tribunal. Under the provisions of Section 18(3) of the Act, a settlement arrived in the course of conciliation and an arbitration award based thereon is not only binding on all the parties to the industrial dispute as provided in Clause (a), but is also binding on all workers engaged in the industry in accordance with clause (c) of the said subsection (3) of Section 18. The petitioner-Union, therefore, cannot be relieved of an award which is binding on them and which is not otherwise found to be erroneous in law.

#. After hearing the learned counsel appearing for the parties, we do not find any evidence or material before us to accept the claim raised by the petitioner-Union that the workers mentioned in List (Annexure P-5) were senior to the workers named in the award in whose favour relief of making them permanent was passed on the basis of settlement reached between the employer and the respondent-Union. Learned counsel for the petitioner has alternatively made a request for setting aside the award of the Industrial Tribunal and remanding the matter to the Tribunal for taking evidence on the question of interse seniority of daily wage workers for deciding their competitive claim or right of permanency on the available posts.

##. There is great force in this submission made on behalf of the respondent-Union that despite available opportunity, at no stage in the course of conciliation, adjudication of dispute or after publication of the award, the petitioner-Union made any attempt to participate in the industrial dispute. The procedure indicated in the Act and the Rules requires issuance of notice to the parties and general notice to all concerned in the industry to enable them to participate in the

industrial dispute. The order of reference of dispute was published. Notices were sent to all the parties to the dispute and a general notice was also issued to enable all concerned to participate. Even if there is some procedural irregularity, the petitioner-Union cannot be heard to say that right from the stage of the Reference in the course of conciliation and adjudication of the dispute and on publication of the award, they had no notice of the proceedings before the Tribunal. This petition has also been filed two years after the publication of the award. It is too late now to send the matter back to the Industrial Tribunal for readjudicating the claims of the members of the petitioner-Union based on their alleged seniority.

##. We also find that the petitioner has miserably failed to produce any material or evidence to prima facie show that they were seniors on the basis of length of service to the employees who were made permanent under the settlement reached between the employer and the respondent-Union and which has been made the basis of the award of the Tribunal.

##. The members of the petitioner-Union having failed to take part in the industrial dispute at the time of Reference, during conciliation or at the stage of adjudication and even after publication of the award, cannot be allowed to assail the award after a period of two years of its publication when the award has fully been implemented and the workers named in the award have been made permanent.

##. We also find no merit in the contention that on the terms of reference of industrial dispute, the Tribunal could not have created posts and it was an act beyond the scope of reference and outside its jurisdiction. We have quoted Term No. 5 above. The Term No. 5 is to be properly construed. It requires the Tribunal to decide the dispute on the question of further requirement of workers for sanitation. It is on the basis of that term of reference that the Tribunal on the settlement reached between the parties directed daily wage employees named in the Award to be made permanent for 20 posts. The employer itself came with a proposal that it was willing to make daily wage employees permanent on 20 newly created posts. It cannot, therefore, be held that the Tribunal by its award created new posts and directed daily wage workers represented by the respondent-Union to be made permanent on them. The last submission, therefore, has also no merit.

As a result of the discussion aforesaid, the Petition fails and is hereby dismissed, but in the circumstances without any order as to costs.

Rule is discharged.

(D.M.DHARMADHIKARI, C.J.)

(D.A. MEHTA, J.)

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